

OPERATING AGREEMENT - FOOD SERVICE

This **OPERATING AGREEMENT** (the "Agreement") is made as of July 1, 2012 (the "Effective Date") by and between the **County of Yadkin, North Carolina** with offices at 210 East Hemlock Street, Yadkinville, NC 27055 (the "County") and **ARAMARK Correctional Services, LLC**, a Delaware limited liability company, having a place of business at the ARAMARK Tower, 1101 Market Street, Philadelphia, Pennsylvania 19107 ("ARAMARK").

WITNESSETH:

1. GRANT: The County hereby grants to ARAMARK the exclusive right to provide food service (excluding vending machine operation) for the County's inmates, staff and visitors at the Yadkin County Jail located at 210 East Hemlock Street, Yadkinville, NC 27055 (the "Facility"). ARAMARK hereby agrees to furnish nutritious, wholesome, and palatable food to such inmates, staff and visitors in accordance with this Agreement. ARAMARK warrants that the food and food service provided shall comply with all applicable federal, state, and local laws and regulations and shall meet all current standards for food and food service (including nutritional standards) as established by:

- A. The American Correctional Association;
- B. The Food and Nutritional Board of the National Academy of Science as prescribed for inmates; and
- C. The State of North Carolina.

2. OPERATIONAL RESPONSIBILITIES:

A. Meal Delivery: Each day during the term of this Agreement, ARAMARK will prepare meals at the Davie County Jail (or such other facility as ARAMARK may select) in accordance with the menu provided by ARAMARK and will deliver three meals per day (hot breakfast and lunch and cold dinner) to the Facility on meal trays fully prepared by ARAMARK. Meal deliveries will include utensils and beverage cups. Facility personnel shall receive meals from ARAMARK at a County-designated location at the Facility. Facility personnel shall return all trays and delivery equipment to ARAMARK at the County-designated location in a timely manner after food service is completed.

B. Food Products and Supplies: ARAMARK shall purchase and pay for all food products and supplies. Products purchased for use in the food service operation shall be the property of ARAMARK until they are delivered to the County for use or consumption. ARAMARK shall purchase all food products from USDA inspected plants that strictly comply with all food safety standards imposed by federal, state, and local law and with all applicable industry standards. All food products purchased shall have a manufacturer's and distributor's warranty of safe and sanitary handling. Food products shall be reviewed and approved by ARAMARK's registered dietitians to ensure that the food products meet all standards provided by this Agreement.

ARAMARK shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) caused by the negligence, intentional or wrongful act or

omission of ARAMARK in its performance of this Agreement, including (by example only and not for purposes of limitation) those for bodily injury, illness, or death resulting from consumption of the food provided by ARAMARK, except that ARAMARK shall not be obligated to indemnify the County for any such loss, liability, claim, demand, suit, cost, damage, or expense to the extent it is shown that such loss, liability, claim, demand, suit, cost, damage or expense was caused by the negligent, wrongful or intentional acts of the County, its employees, or agents or by the acts or omissions of inmates at the Facility. If any such loss, liability, claim, demand, suit, cost, damage, or expense is caused by the negligence of both parties, the apportionment of said damages, injury, loss or claim shall be shared between both parties based upon the comparative degree of each party's negligence, and each party shall be responsible for its own defense and its own costs including but not limited to the cost of defense, attorney's fees and witnesses' fees and expenses incident thereto. The County shall promptly notify Aramark of any claim for which indemnity is sought and shall cooperate with Aramark in the defense of such claim. Aramark shall have the sole discretion to defend and settle such claim, except that any settlement or other decision that would impose any financial or other obligation on the County must be approved by the County. Both parties' obligations under this paragraph shall survive termination of this Agreement.

It is expressly understood that County officers, employees, agents, and inmates shall not be deemed agents or employees of ARAMARK and that ARAMARK shall incur no liability for, or on behalf of, such people, except to the extent that ARAMARK may be required to indemnify them pursuant to the above paragraph.

C. Intentionally deleted.

D. Menu: The menu served at the Facility may be modified in any way by mutual agreement of the parties.

E. Sanitation: The County shall be responsible for cleaning the vents and ductwork leading to the roof from food preparation areas. The County shall be responsible for extermination services and the removal of trash and garbage from the designated food service area.

F. Personnel: ARAMARK shall provide sufficient personnel to prepare the meal trays for timely food service at the Facility. Personnel provided by ARAMARK shall at all times be deemed ARAMARK's personnel and under the supervision and control of ARAMARK, and they shall not be considered employees of the County for any purpose.

The County acknowledges that ARAMARK has invested considerable amounts of time and money in training its management and supervisory employees in systems, procedures, methods, forms, reports, formulas, computer programs, recipes, menus, plans, techniques and other valuable information which is proprietary and unique to ARAMARK's manner of conducting its business and that such information is available, on a confidential basis, to ARAMARK's management and supervisory employees. Therefore, the County agrees that management and supervisory employees of ARAMARK shall neither be hired by the County for the term of this Agreement and twelve (12) months thereafter. For the purpose of this prohibition, "management and supervisory employees" shall be defined as those persons who have directly or indirectly performed management or professional services on the County's premises at any time during the twelve (12) month period immediately preceding termination of this Agreement.

The County retains the right to thoroughly investigate any current or prospective employees assigned to the Facility, subject to applicable Federal, state and local laws and regulations, including but not limited to, the Federal Polygraph Protection Act, as amended.

G. Equal Employment Opportunity: ARAMARK agrees that it shall not discriminate against any employee or applicant for employment or on any matter directly or indirectly related to employment, because of race, color, religion, sex, sexual preference, national origin, physical or mental handicap where not relevant to the job, height, weight, age, marital status, or other criteria made illegal by state or federal law or County policy. In addition, ARAMARK agrees to take affirmative steps to ensure that applicants are employed, and that employees are treated, during employment, without regard to the criteria listed above.

H. INSURANCE: ARAMARK shall provide and maintain the following insurance coverage:

Worker's Compensation insurance as required by law.

Comprehensive General (Public) Liability to include (but not be limited to) the following: Premises/operation; independent contractors; bodily injury; products/completed operation; contractual liability with a combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence. ARAMARK may satisfy these requirements through a combination of primary and excess coverage.

Any insurance coverage (additional insured or otherwise) that ARAMARK provides for the County, its officers, employees, agents and servants shall only cover liability assumed by ARAMARK in this Agreement; such insurance coverage shall not cover liability in connection with or arising out of the wrongful or negligent acts or omissions of the County or its officers, employees, agents and servants.

I. Damages: In no event will either party be liable to the other party for any damages for loss of business or business interruption.

J. Compliance With Laws: Each party hereto shall comply with all applicable federal, state, and local laws and regulations. The County shall provide reasonable and adequate physical security at all times for ARAMARK employees to the extent they are inside the County jail.

K. License, Fees, Permits, And Taxes: ARAMARK shall secure and pay for all federal, state and local licenses, permits and fees required for the services that ARAMARK is to provide under this Agreement. The County agrees to provide evidence of its tax-exempt status to ARAMARK upon request. The County further agrees to notify ARAMARK promptly in the event of a change in its tax-exempt status. If after the Effective Date there is a change in North Carolina law or a change in how North Carolina law is interpreted by State agencies that eliminates or diminishes the County's tax-exempt status, and if as a consequence the State retroactively imposes taxes on ARAMARK for activities already performed by ARAMARK in the course of providing services under this Agreement, then the County shall reimburse ARAMARK for those retroactively imposed taxes.

3. FINANCIAL AND ACCOUNTING ARRANGEMENTS:

A. Meal Service and Prices: ARAMARK shall provide meals to the County's inmates, staff and visitors at the per meal prices set forth in the options on Attachment A. The County may, at its option, from time to time elect to serve the Option A Menu or the Option B Menu (Individual Sealed Prepared Meals). The County shall give ARAMARK notice of its initial election before services begin under this Agreement and shall give ARAMARK sixty (60) days advance notice of any change in that election during the term of this Agreement. Based on the option selected, the price per meal shall be as set forth in Attachment A, with the County from time to time selecting whether ARAMARK will provide 2100-, 2300-, or 2700-calorie meals. ARAMARK will provide, at no additional cost, a lacto-ovo vegetarian and/or vegan meals as requested by the County for any particular inmates, staff, or visitors. Any other specialty meals requested by the County shall be provided at a price to be mutually agreed upon by the parties in advance. The County shall initially notify ARAMARK of the actual number of meals ordered each day at a mutually agreed upon time prior to that day's meal service, and the County shall make additions or deletions to that order by a mutually agreed upon deadline prior to that day's meal service. When the initial notice of the number of meals ordered is not given by the County by the mutually agreed upon time prior to that day's meal service, ARAMARK shall prepare and will be paid for the same number of meals as prepared for the previous day.

B. Price Adjustments: The per meal prices stated in Attachment A to this Agreement are firm for the period beginning on the Effective Date and ending on June 30, 2015. To the extent that the parties agree to extend this Agreement past June 30, 2015, per meal prices for each subsequent 12-month period shall be as agreed upon by the parties in a signed writing; provided, however, that in the event no agreement is reached with respect to such increase, per meal prices shall be increased as further set forth below by the greater of the (a) yearly percentage change in the Consumer Price Index, All Urban Consumers, U.S. City Average, Food Away From Home Index ("CPI-FAH"), published by the U.S. Department of Labor and (b) the yearly percentage change in the Market Basket of Products (as defined below) which approximate the products served at the facilities covered by this Agreement (the "Client Menu"). The period for determining CPI-FAH and Market Basket of Products increases shall be April of the immediately preceding year to April of the then-current year (the "Base Period").

As set forth on the sample client statement attached as Attachment B, a copy of which shall be provided prior to implementing any price adjustments pursuant to this section, the "Market Basket of Products" represents categories or types of products that are generally used in the Client Menu. Such products are classified into the following six categories of food items (each, a "Menu Category"): beverage (composed of juice and non-alcoholic drinks other than milk); baked goods; produce (composed of fruits and vegetables); dairy; meat; and grocery items (composed of the food items in the menu that are not otherwise included in one of the preceding categories). Each Menu Category will be ascribed a percentage (the "Category Weighting") representing the proportion of the Client Menu that such Menu Category approximately represents based on purchasing levels during the Base Period. Each Category Weighting will then be multiplied by the percentage change in the corresponding Bureau of Labor Statistics ("BLS") category compiled by the U.S. Department of Labor and published at www.bls.gov for the Base Period, and the results of each such calculation will be added together to arrive at the overall percentage change which will represent the Market Basket of Products. For the avoidance of doubt, the BLS categories to be multiplied by the Category Weightings are (1) Beverage, All Urban Consumers, U.S. City Average; (2) Baked Goods, All Urban Consumers, U.S. City Average; (3) Produce, All Urban Consumers, U.S. City Average; (4) Dairy, All Urban Consumers, U.S. City Average; (5) Meat, All Urban Consumers, U.S. City Average; and (6) Food, All Urban Consumers, U.S. City Average. In the event that there are any changes in the method in which the BLS reports its annual statistics,

including any changes or modifications to any of the applicable BLS categories, the parties agree to negotiate a mutually agreeable modification to the appropriate Market Basket of Products category or categories or the methodology described above. If the parties do not agree on such a modification, ARAMARK shall have the right to terminate the Agreement upon 90 days' prior written notice. The Market Basket of Products is designed to approximate price adjustments with product cost increases at the facility or facilities covered by this Agreement. The Market Basket of Products is an estimate of food costs only and actual costs may vary. While the Menu Categories attempt to approximate the products served at the facility or facilities covered by this Agreement, they may not precisely parallel actual usage or the BLS categories listed above.

Please refer to Attachment B for an example of the Market Basket of Products calculation.

C. Additional Services: Food, beverage and other services required or desired by the County outside the scope of this Agreement (including Fresh Favorites) shall be provided by ARAMARK upon written authorization signed by the County Manager and/or Sheriff specifying mutually agreed upon prices for such services.

D. Billing: ARAMARK shall submit to the County on the first day of every week an invoice for inmate/staff meals ordered or served (to the extent that service of a greater number of meals than was ordered was authorized by the County), whichever is greater, and other goods or services provided by ARAMARK pursuant to this Agreement, if any. The invoice shall reflect the preceding week's food services detailing the exact number of meals served on a daily basis as follows:

1. Actual number of adult inmate meals
2. Actual number of staff/visitor meals
3. Any additional food, beverage or other services, as ordered

ARAMARK shall provide the County with a comprehensive monthly summary of meals, services and credits. This summary shall be forwarded to the County Manager or his designee each month.

E. Manner Of Payment: Payment shall be made by check payable to ARAMARK Correctional Services, LLC within thirty (30) days after the invoice date. Such payment shall be sent to:

ARAMARK Correctional Services, LLC
P.O. Box 406019
Atlanta, Georgia 30384-6019

(Payments only shall be sent to this address; all other correspondence shall be sent to the address for ARAMARK set forth at the beginning of this Agreement.) For any invoice for which payment is not mailed within thirty (30) days of the invoice date, interest shall be computed from the 31st date after the invoice date until the date the invoice is paid, at the lower of: (i) One Hundred Twenty-Five Percent (125%) of the Prime Interest Rate per annum on the unpaid balance, or (ii) the maximum legal rate of interest permitted by North Carolina law. The term "Prime Interest Rate" shall mean the interest rate published in The Wall Street Journal as the base rate on corporate loans posted by at least Seventy-Five Percent (75%) of the thirty (30) largest U.S. commercial banks, such rate to be adjusted on the last day of each ARAMARK accounting period.

The right of ARAMARK to charge interest for late payment shall not be construed as a waiver of ARAMARK's right to require payment to be mailed within thirty (30) days of the invoice date.

4. **MATERIAL ADVERSE CHANGE:** The pricing in this Agreement is based on market and regulatory conditions existing as of the Effective Date. If after the Effective Date there is a Material Adverse Change (as defined below) that is shown by ARAMARK to materially increase ARAMARK's total cost of providing services under this Agreement, then ARAMARK shall give the County written notice of the Material Adverse Change, and within thirty (30) calendar days after that notice ARAMARK and the County shall begin using their best efforts to mutually agree upon modification(s) to this Agreement to offset the increased cost to ARAMARK. These modifications may include any or a combination of the following: an adjustment to ARAMARK's price per meal, modifications to the menu, or modifications to ARAMARK's scope of services. If the County and ARAMARK cannot, after reasonable good faith efforts, agree on mutually acceptable modifications, then ARAMARK may choose to terminate this Agreement under Section 7(A) of this Agreement. "Material Adverse Change" means: (i) a substantial increase in the price of food, fuel, equipment, utilities and supplies used by ARAMARK to provide services under this Agreement; (ii) a substantial increase in Federal, State, and local sales tax rates paid by ARAMARK that are directly applicable to the services provided by ARAMARK under this Agreement; or (iii) a substantial change in Federal, State, and local laws and regulations directly applicable to the services provided by ARAMARK under this Agreement.

5. **ACCESS AND RECORDS:** ARAMARK will maintain accurate books and records in connection with the services it shall provide under this Agreement and shall retain the records for each federal fiscal year for thirty-six (36) months after the close of that federal fiscal year (October 1 through September 30).

6. **TERM OF AGREEMENT:** The initial term of this Agreement shall commence on the Effective Date and shall continue through June 30, 2015. By signed written agreement of the parties, this Agreement may be renewed for additional periods of twelve (12) months each, provided that the services to be provided, and the prices thereof, for each extension period are mutually agreed upon by the County and ARAMARK in a signed writing.

7. **TERMINATION:**

A. **Termination For Convenience or Material Adverse Change:** The County may terminate this Agreement for convenience at any time during the initial term or any renewal or extension upon ninety (90) days written notice to ARAMARK. ARAMARK may terminate this Agreement for convenience at any time during the initial term or any renewal or extension upon one hundred and eighty (180) days written notice to the County. For the avoidance of doubt, if ARAMARK provides notice of a Material Adverse Change under Section 4 of this Agreement and the County and ARAMARK fail to agree on mutually acceptable modifications pursuant to that Section, ARAMARK may terminate this Agreement by providing one hundred and eighty (180) days written notice to the County.

If Aramark terminates this Agreement pursuant to this Section 7(A), but when the termination date arrives the County, despite reasonable diligence, has not finished procuring another vendor to replace Aramark, at the County's request Aramark shall agree to continue this Agreement on a month-to-month basis until the County is able to procure a replacement vendor. During such a month-to-

month continuation of this Agreement, the terms of this Agreement shall remain unchanged, but the County and Aramark may agree to alternative per-meal prices to be charged during the month-to-month period, except that those prices may not exceed 10% of the prices being charged when Aramark provided its notice of termination.

B. Termination For Default: Either party may terminate this Agreement upon a breach or default of this Agreement by the other party which is not cured within a reasonable time, not to exceed thirty (30) days, after receipt by the defaulting party of a notice from the non-defaulting party specifying the nature of such breach or default.

C. Consequences Of Termination: If this Agreement is terminated under any circumstances, the County shall pay ARAMARK for all inmate and staff meals, and other services, provided by ARAMARK pursuant to this Agreement to and including the date of termination, at the prices and within the payment periods set forth in this Agreement. The County's obligation to pay for meals and services provided shall survive the termination or expiration of this Agreement.

8. NOTICE: All notices or other communication hereunder shall be deemed to be duly given when made in writing and delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested and addressed to the party at its respective address first set forth above, or such other address as it may designate, by notice given as aforesaid.

9. CONFLICTS OF INTEREST: ARAMARK covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of this Agreement and no person having any such interest shall be employed. In addition, no officer, agent or employee of the County and no member of its governing body shall participate in any decision relating to this Agreement if his or her participation would violate North Carolina law.

10. CONFIDENTIAL INFORMATION: All financial, statistical, operating and personnel materials and information, including, but not limited to, software, technical manuals, recipes, menus and meal plans, policy and procedure manuals and computer programs relative to or utilized in ARAMARK's business (collectively, the "ARAMARK Proprietary Information") are and shall remain confidential and the sole property of ARAMARK and constitute trade secrets of ARAMARK. The County shall keep all ARAMARK Proprietary Information confidential and shall use the ARAMARK Proprietary Information only for the purpose of fulfilling the terms of this Agreement. The County shall not photocopy or otherwise duplicate any materials containing any ARAMARK Proprietary Information without the prior written consent of ARAMARK. Upon the expiration or any termination of this Agreement, all materials containing any ARAMARK Proprietary Information shall be returned to ARAMARK. Notwithstanding any other provision in this Agreement, however, nothing in this Agreement shall be construed to require the County to violate North Carolina's laws governing public records and open meetings.

11. ASSIGNMENT: ARAMARK may not assign this Agreement without the County's prior written consent (not to be unreasonably withheld, conditioned or delayed).

12. PRESS RELATIONS: ARAMARK shall coordinate with the County Sheriff or Facility Administrator on any and all press or media releases.


13. **ENTIRE AGREEMENT:** This Agreement represents the entire agreement and understanding between the County and ARAMARK concerning the subject matter and supersedes all prior negotiations, representations or agreements, either written or oral, concerning the subject matter. This Agreement may be amended only by written instrument signed by both the County and ARAMARK.

14. **SEVERABILITY:** If any provision hereof or the application thereof to any person or circumstance is held by a court of competent jurisdiction to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

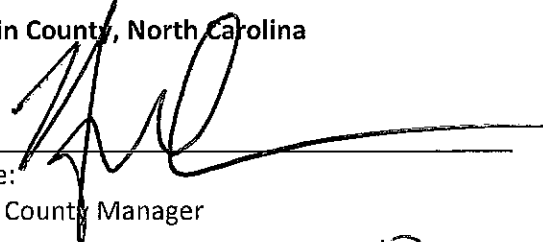
15. **WAIVER:** The failure of ARAMARK or the County to exercise any right or remedy available under this Agreement upon the other party's breach of the terms, covenants and conditions of this Agreement or the failure to demand the prompt performance of any obligation under this Agreement shall not be deemed a waiver of such right or remedy; or the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

ARAMARK Correctional Services, LLC


By: 
David Kimmel
Vice President, Finance

Yadkin County, North Carolina

By: 
Name:
Title: County Manager

9-20-12

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

 9-20-12